Supreme Court U.S.
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No. 05-051380

IN THE

Supreme Court of the United States

TIFFANY WILLIAMS,

Petitioner,

v.

MARION JACKSON and JOHN HAMMONDS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Georgia foster parents who allow their thirty-two year old, biological son, who has previous convictions for sexual abuse and armed robbery and who is abusing crack cocaine, to live in the basement of their home along with their thirteen year old foster daughter act under the color of state law for purposes of 42 U.S.C. § 1983 when the foster parents have been screened, trained and certified as foster parents by the State of Georgia, their home is certified as a foster home by the State of Georgia, the State places foster children in the home on long term bases and on short term bases, the State reimburses the foster parents for the foster children's basic living expenses, State employees visit the foster home in order to supervise the foster children residing therein, the State has a statutorily pronounced mission to safeguard Georgia's children through a program of child welfare and youth services, including foster care, the State entered into a Consent Decree requiring the State to implement and maintain certain procedures designed to protect foster children, and the Georgia Tort Claims Act expressly defines foster parents as "state employees," thereby providing foster parents with sovereign immunity from tort claims.

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Appendix A — Judgment Of The United States Court Of Appeals For The Eleventh Circuit Dated January 27, 2006 ..... 1a

Appendix B — Order In The United States District Court For The Northern District Of Georgia, Atlanta Division Dated August 30, 2005 ..... 3a

Tiffany Williams respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is not reported. (*See* App., at 1a) The opinion and order of the district court were not reported. (*See* App., at 3a.)

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on January 27, 2006. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTES INVOLVED

42 U.S.C. § 1983 provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial

> capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

O.C.G.A. § 50-21-22 provides, in pertinent part:

> As used in this article, the term:
>
> (1) "Claim" means any demand against the State of Georgia for money only on account of loss caused by the tort of any state officer or employee committed while acting within the scope of his or her official duties or employment.
>
> * * * *
>
> (7) "State officer or employee" means an officer or employee of the state, elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of the state in any official capacity, whether with or without compensation, but the term does not include an independent contractor doing business with the state. The term state officer or employee also includes any natural person who is a member of a board, commission, committee, task force, or similar body established to perform specific tasks or advisory functions, with or without compensation, for the state or a state government entity, and any natural person who is a volunteer

> participating as a volunteer, with or without compensation, in a structured volunteer program organized, controlled, and directed by a state government entity for the purposes of carrying out the functions of the state entity. This shall include any health care provider and any volunteer when providing services pursuant to Article 8 of Chapter 8 of Title 31. An employee shall also include foster parents and foster children. Except as otherwise provided for in this paragraph, the term shall not include a corporation whether for profit or not for profit, or any private firm, business proprietorship, company, trust, partnership, association, or other such private entity.

O.C.G.A. § 50-21-25 provides, in pertinent part:

> (a) This article constitutes the exclusive remedy for any tort committed by a state officer or employee. A state officer or employee who commits a tort while acting within the scope of his or her official duties or employment is not subject to lawsuit or liability therefor. However, nothing in this article shall be construed to give a state officer or employee immunity from suit and liability if it is proved that the officer's or employee's conduct was not within the scope of his or her official duties or employment.
>
> (b) A person bringing an action against the state under the provisions of this article must name as a party defendant only the state government entity for which the state officer or employee was acting and shall not name the state officer or employee

> individually. In the event that the state officer or employee is individually named for an act or omission for which the state is liable under this article, the state government entity for which the state officer or employee was acting must be substituted as the party defendant.

STATEMENT OF THE CASE

Petitioner was sexually abused by Respondents' thirty-two year old, biological son while residing in Respondents' foster home. Respondents knew that their son had previous convictions for sexual abuse and armed robbery. In addition, the son was actively abusing crack cocaine during the pertinent time frame. Respondent Hammonds suspected that his son was abusing illegal drugs while he resided in Respondents' home. Nevertheless, Respondents permitted their son to reside in their home while they had several female foster children in their care. Moreover, Respondents placed Petitioner in a bedroom located in the basement of their home and allowed their son to occupy another bedroom in the basement.

Petitioner became pregnant as a result of Respondents' son sexually abusing her. The abuse was discovered after Petitioner became pregnant. Respondents' son was arrested and pled guilty to charges stemming from the sexual abuse. Respondents' son also pled guilty to an unrelated murder and is currently serving a life sentence in a Georgia state penitentiary.

The State's Foster Care System.

The State of Georgia has promulgated a statutory and regulatory scheme the purpose of which is to "promote, safeguard, and protect the well-being and general welfare of children and youth of th[e] state through a comprehensive and coordinated program of public child welfare and youth services. . . ." O.C.G.A. § 49-5-2. The Eleventh Circuit Court of Appeals has described Georgia's statutory scheme as "more than just 'procedural guidelines' to be followed in arriving at decisions." *Taylor v. Ledbetter*, 818 F.2d 791, 799 (1987). Rather,

> [t]he Georgia foster care and placement scheme is a comprehensive one. . . . The law governing the licensing of child placement agencies clearly mandates that the [Georgia] Department of Human Resources 'in placing children in foster family homes, shall safeguard the welfare of such children by thoroughly investigating each such home and the character and reputation of the persons residing therein and shall adequately supervise each home during the period of care. . . . It shall be the duty of the department to inspect at regular intervals all licensed child welfare agencies within the state including . . . foster family homes. . . ."

Id. (citing O.C.G.A. § 49-5-1291 (m)).

Moreover, State regulations governing foster care services require that the selection of a foster home should be based upon how well the home will meet the needs of the child. The regulations also require the State to supervise

children in foster homes "through visits made at regular intervals and as frequently as necessary for the best interest of the child." *Id.* (citing O.C.R.R.G. § 290-2-12-08)). "Thus, the Georgia scheme mandates that State officials follow guidelines and take affirmative actions to ensure the well being and promote the welfare of children in foster care." *Id.*

In addition to the foregoing statutes and regulations, as part of a settlement in *Taylor*, the Georgia Department of Human Resources ("DHR") entered into a "Consent Decree," in which the DHR agreed to implement certain practices and procedures to help the Department protect children in foster care. These procedures relate to (1) the approval of foster homes, (2) the pre-placement preparation of foster children and the foster parents, (3) the supervision of foster children while in foster homes, (4) investigations of suspected abuse and neglect, and (5) medical care for foster children.

Furthermore, through the Georgia Tort Claims Act ("GTCA"), the State has statutorily defined foster parents as "state employees." *See* O.C.G.A. § 50-21-22 (7). In doing so, the State has granted foster parents total immunity for torts committed during the course of their duties as foster parents. *See* O.C.G.A. § 50-21-25 (a) (providing state employees immunity for torts committed while acting in the scope of their official duties). Conversely, the State has legislatively waived the State's sovereign immunity for torts committed by foster parents. The State's waiver of sovereign immunity, however, is subject to several exceptions, including an exception for "losses resulting from . . . [a]ssault, [and] battery. . . ." *See* O.C.G.A. § 50-21-24 (7). A claim arising out of a sexual assault falls within this exception, even if the state employee being sued was not